

(d) A state agency which adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with this section if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation which the agency proposes to adopt or amend which are different from the corresponding provisions of the federal regulation.

Section 11346.8. Hearing; Actions Affecting Regulations; Public Notification; Conditions

(a) If a public hearing is held, statements, arguments, or contentions, either oral or in writing, or both, shall be permitted. If a public hearing is not scheduled, the state agency shall, consistent with Section 11346.4, afford any interested person or his or her duly authorized representative, the opportunity to present statements, arguments or contentions in writing. In addition, a public hearing shall be held if, no later than 15 days prior to the close of the written comment period, an interested person or his or her duly authorized representative submits in writing to the state agency, a request to hold a public hearing. The state agency shall, to the extent practicable, provide notice of the time, date, and

place of the hearing by mailing the notice to every person who has filed a request for notice thereby with the state agency. The state agency shall consider all relevant matter presented to it before adopting, amending or repealing any regulation.

(b) In any hearing under this section the state agency or its duly authorized representative shall have authority to administer oaths or affirmations. An agency may continue or postpone a hearing from time to time to the time and at the place as it determines. If a hearing is continued or postponed, the state agency shall provide notice to the public as to when it will be resumed or rescheduled.

(c) No state agency may adopt, amend, or repeal a regulation which has been changed from that which was originally made available to the public pursuant to Section 11346.5, unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days before the agency adopts, amends, or repeals the resulting regulation. Any written comments received regarding the change must be responded to in the final statement of reasons required by subdivision (b) of Section 11346.7.

(d) No state agency shall add any material to the record of the rulemaking proceeding after the close of the public hearing or comment period, unless adequate provision is made for public comment on that matter.

- (3) Loading and unloading procedures,
- (4) The properties and hazards of the material transported, and
- (5) Retest and inspection requirements for cargo tanks
- ★ (c) The training required by paragraphs (a) and (b) of this section may be satisfied by compliance with the current requirements for a Commercial Driver's License (CDL) with a tank vehicle or hazardous materials endorsement.
- (d) Training required by paragraph (b) of this section must conform to the requirements of § 172.704 of this subchapter with respect to frequency and recordkeeping.

Sec. 177.817 Shipping papers. (a) **General requirements.** A carrier may not transport a hazardous material unless it is accompanied by a shipping paper that is prepared in accordance with §§ 172.200, 172.201, 172.202, and 172.203 of this subchapter.

(b) **Shipper certification.** An initial carrier may not accept a hazardous material offered for transportation unless the shipping paper describing the material includes a shipper's certification which meets the requirements in § 172.204 of this subchapter. Except for a hazardous waste, the certification is not required for shipments to be transported entirely by private carriage and for bulk shipments to be transported in a cargo tank supplied by the carrier.

(c) **Requirements when interlining with carriers by rail.** A motor carrier shall mark on the shipping paper required by this section, if it offers or delivers a freight container or transport vehicle to a rail carrier for further transportation.

- (1) A description of the freight container or transport vehicle, and
- (2) The kind of placard affixed to the freight container or transport vehicle.

(d) This subpart does not apply to a material that is excepted from shipping paper requirements as specified in § 172.200 of this subchapter.

(e) **Shipping paper accessibility—accident or inspection.** A driver of a motor vehicle containing hazardous material, and each carrier using such a vehicle, shall ensure that the shipping paper required by this section is readily available to, and recognizable by, authorities in the event of accident or inspection. Specifically, the driver and the carrier shall:

- (1) Clearly distinguish the shipping paper, if it is carried with other shipping papers or other papers of any kind, by either distinctively tabbing it or by having it appear first; and
- (2) Store the shipping paper as follows:
 - (i) When the driver is at the vehicle's controls, the shipping paper shall be: (A) Within his immediate reach while he is restrained by the lap belt; and (B) either readily visible to a person entering the driver's compartment or in a holder which is mounted to the inside of the door on the driver's side of the vehicle.
 - (ii) When the driver is not at the vehicle's controls, the shipping paper shall be: (A) In a holder which is mounted to the inside of the door on the driver's side of the vehicle; or (B) on the driver's seat in the vehicle.

Sec. 177.818 Special instructions; Division 2.1 (flammable gas) materials that are cryogenic liquids. (a) No carrier may operate, and no driver may drive, a motor vehicle transporting a Division 2.1 (flammable gas) material that is a cryogenic liquid in a package exceeding 450 liters (119 gallons) water capacity unless written instructions containing the following information are carried with the required shipping papers:

- (1) General precautions,
- (2) Manual venting instructions,
- (3) Emergency procedures, and
- (4) The names and telephone numbers of persons to be contacted in case of emergency or accident

Sec. 177.821 Hazardous materials forbidden or limited for transportation. (a) **Nitroglycerin, desensitized liquid nitroglycerin or diethylene glycol dinitrate forbidden to common carriers.** Liquid nitroglycerin, desensitized liquid nitroglycerin or diethylene glycol dinitrate, except as defined in § 173.53(e) of this chapter, may not be accepted for transportation or be transported by any common carrier by motor vehicle.

(b) **Rejection of leaking containers of liquid nitroglycerin, desensitized liquid nitroglycerin or diethylene glycol dinitrate.** Any individual container used for the transportation of liquid nitroglycerin, desensitized liquid nitroglycerin or diethylene glycol dinitrate, or any boat used therewith, found in such a condition as to permit leakage, shall be discarded and shall not thereafter be repaired for further use

(c) **Hazardous materials forbidden or limited for transportation.** No motor carrier may accept for transportation or transport any hazardous material listed in Hazardous Materials Table (§ 172.101 of this chapter), as "forbidden" for transportation by all

motor carriers, nor, if there be any prohibition or limitation regarding the transportation of any particular hazardous material by a particular kind of motor carrier, may any such article be accepted for transportation or be transported by that kind of carrier, except as indicated in this part. (See § 177.870.)

(d) **Leaking or damaged packages of Division 1.1 or 1.2 (high explosive) material must not be accepted for transportation or transported.** Should any package of Division 1.1 or 1.2 (high explosive) material when offered for shipment show excessive dampness or be moldy or show outward signs of any oily stain or other indication that absorption of the liquid part of the Class 1 (explosive) material is not perfect, or that the amount of the liquid part is greater than the absorbent can carry, the package must be refused in every instance. The shipper must substantiate any claim that a stain is due to contact with material other than the liquid explosive ingredient of the Class 1 (explosive) material. In case of doubt the package must be rejected.

(e) [Reserved]

(f) **Smokeless powder for small arms in quantities not exceeding 45 kg (99 pounds) net weight transported in one car or motor vehicle may be classed as a Class 4 (flammable solid) material when examined for this classification by the Bureau of Explosives and approved by the Associate Administrator for Hazardous Materials Safety.** Maximum quantity in any inside packaging must not exceed 3.6 kg (7.9 pounds) and inside packagings must be arranged and protected to prevent simultaneous ignition of the contents. The complete package must be a type examined by the Bureau of Explosives and approved by the Associate Administrator for Hazardous Materials Safety. Each outside package must bear a flammable solid label.

Sec. 177.822 Acceptable articles. (a) Any motor carrier may accept for transportation or transport any acceptable hazardous materials listed in the Hazardous Materials Table, § 172.101 of this subchapter. *Provided, however,* That no provision of this section shall be so construed as to permit the acceptance or transportation of liquid nitroglycerin, desensitized liquid nitroglycerin or diethylene glycol dinitrate, other than as defined in § 173.53(e) of this subchapter, by any common carrier.

(b) **Liquid nitroglycerin, desensitized liquid nitroglycerin or diethylene glycol nitrate.** Liquid nitroglycerin, desensitized liquid nitroglycerin or diethylene glycol dinitrate, other than as defined in § 173.53(e) of this subchapter, may be transported only by motor carriers other than common carriers in containers complying with specification MC 200 (§ 178.351 of this subchapter). No form of trailer may be attached.

Sec. 177.823 Marking and placarding motor vehicles. (a) A carrier may not move a transport vehicle containing a hazardous material unless the vehicle is marked and placarded in accordance with Part 172 or as authorized in § 171.12a of this subchapter, or unless, in an emergency:

- (1) The vehicle is escorted by a representative of a state or local government,
- (2) The carrier has permission from the Department, or:
- (3) Movement of the transport vehicle is necessary to protect life or property

Sec. 177.824 Retesting and inspection of cargo tanks. Except as otherwise provided in this subchapter, no motor carrier may operate a specification cargo tank motor vehicle containing a hazardous material unless the cargo tank motor vehicle conforms to the retest and inspection requirements set forth in Subpart E of Part 180 of this subchapter. This paragraph does not apply to any cargo tank filled prior to the retest or inspection due date.

Sec. 177.825 Routing and training requirements for Class 7 (radioactive) materials. (a) Except as provided in paragraph (b) of this section, a carrier or any person operating a motor vehicle that contains a Class 7 (radioactive) material for which placarding is required under part 172 of this subchapter shall—

- (1) Ensure that the motor vehicle is operated on routes that minimize radiological risk;
- (2) In determining the level of radiological risk, consider available information on accident rates, transit time, population density and activities, and the time of day and the day of week during which transportation will occur; and
- (3) Tell the driver which route to take and that the motor vehicle contains Class 7 (radioactive) materials

The requirements of this paragraph do not apply when there is only one practicable highway route available, considering operating necessity and safety, or when the routing of the motor vehicle is subject to paragraph (b) of this section

(b) Except as otherwise permitted in this paragraph and in par-

agraph (e) of this section, a carrier or any person operating a motor vehicle containing a highway route controlled quantity of Class 7 (radioactive) materials, as defined in § 173.403(l) of this subchapter, shall operate the motor vehicle only over preferred routes. Those routes must be selected by the carrier or that person operating a motor vehicle containing a highway route controlled quantity of radioactive materials to reduce time in transit over the preferred route segment of the trip. An Interstate System bypass or Interstate System beltway around a city, when available, shall be used in place of a preferred route through a city, unless a State routing agency has designated an alternative route.

(1) A preferred route is either or both an Interstate System highway for which an alternative route is not designated by a State routing agency as provided in this section, or a State-designated route selected by a State routing agency (see § 171.8 of this subchapter) in accordance with the following conditions:

- (i) The State routing agency shall select routes to minimize radiological risk using "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Class 7 (Radioactive) Materials," or an equivalent routing analysis which adequately considers overall risk to the public. Designations must be preceded by substantive consultation with affected local jurisdictions and with any other affected States to ensure consideration of all impacts and continuity of designated routes.
 - (ii) State routing agencies may designate preferred routes as an alternative to, or in addition to, one or more Interstate System highways, including an Interstate System bypass or an Interstate System beltway.
 - (iii) A State-designated route is effective when—
 - (A) The State gives written notice by certified mail, return receipt requested to the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001 (Attention: Registry of State-designated Routes, Docket HM-164A); and
 - (B) Receipt thereof is acknowledged in writing by the Associate Administrator for Hazardous Materials Safety.
 - (iv) Upon request, the Dockets Unit will provide a list of State designated preferred routes and a copy of the "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials."
- (2) A motor vehicle may be operated over a route, other than a preferred route, only under the following conditions:
- (i) The deviation from the preferred route is necessary to pick up or deliver a highway route controlled quantity of Class 7 (radioactive) materials, to make necessary rest, fuel or motor vehicle repair stops, or because emergency conditions make continued use of the preferred route unsafe or impossible.
 - (ii) For pickup and delivery not over preferred routes, the route selected must be the shortest-distance route from the pickup location to the nearest preferred route entry location, and the shortest-distance route to the delivery location from the nearest preferred route exit location. Deviation from the shortest-distance pickup or delivery route is authorized if such deviation:
 - (A) Is based upon the radiological risk minimization criteria of paragraph (a) of this section; and
 - (B) Does not exceed the shortest-distance pickup or delivery route by more than 25 miles and does not exceed 5 times the length of the shortest-distance pickup or delivery route.
 - (iii) Deviations from preferred routes, or pickup or delivery routes other than preferred routes, which are necessary for rest, fuel, or motor vehicle repair stops or because of emergency conditions, shall be made in accordance with the radiological risk minimization criteria of paragraph (a) of this section unless, due to emergency conditions, time does not permit use of those criteria.
 - (C) A carrier (or his agent) who operates a motor vehicle which contains a package of highway route controlled quantity Class 7 (radioactive) materials as defined in § 173.403(1) of this subchapter shall prepare a written route plan and supply a copy before departure to the motor vehicle driver and a copy to the shipper (before departure for exclusive use shipments, or otherwise within fifteen

working days following departure). Any variation between the route plan and routes actually used, and the reason for it, shall be reported in an amendment to the route plan delivered to the shipper as soon as practicable but within 30 days following the deviation. The route plan shall contain:

- (1) A statement of the origin and destination points, a route selected in compliance with this section, all planned stops, and estimated departure and arrival times; and
- (2) Telephone numbers which will access emergency assistance in each State to be entered.
- (d) No person may transport a package of highway route controlled quantity of Class 7 (radioactive) materials, as defined in § 173.403(l) of this subchapter, on a public highway unless:
 - (1) The driver is trained as required by subpart H of part 172 of this subchapter and § 177.816.
 - (2) A copy of the record of training required by § 172.704 of this subchapter is in the immediate possession of the driver.
 - (3) The route plan required in paragraph (c) of this section is in the immediate possession of the driver and the motor vehicle is operated by the driver in accordance with the route plan.
- (e) A person may transport irradiated reactor fuel only in compliance with a plan if required under § 173.22(c) of this subchapter that will ensure the physical security of the material. Variation for security purposes from the requirements of this section is permitted so far as necessary to meet the requirements imposed under such a plan, or otherwise imposed by the U.S. Nuclear Regulatory Commission in 10 CFR Part, 73
- (f) Except for packages shipped in compliance with the physical security requirements of the U.S. Nuclear Regulatory Commission in 10 CFR Part 73, each carrier who accepts for transportation a highway route controlled quantity of Class 7 (radioactive) material (see § 173.401(1)), shall, within 90 days following the acceptance of the package, file the following information concerning the transportation of each such package with the Associate Administrator for Hazardous Materials Safety (RSPA):
 - (1) The route plan required under paragraph (c) of this section, including all required amendments reflecting the routes actually used;
 - (2) A statement identifying the names and addresses of the shipper, carrier and consignee; and
 - (3) A copy of the shipping paper or the description of the Class 7 (radioactive) material in the shipment required by §§ 172.202 and 172.203 of this subchapter.

Sec. 177.826 Carrier's registration statement; Division 2.1 (flammable gas) materials that are cryogenic liquids. (a) No person may transport a Division 2.1 (flammable gas) material that is a cryogenic liquid in a portable tank or a cargo tank unless he has filed a registration statement by certified mail, return receipt requested, with the Associate Administrator for Hazardous Materials Safety, RSPA in accordance with paragraphs (b), (c) and (d) of this section.

(b) The registration statement must contain the following information:

- (1) The carrier's name and principal place of business.
- (2) Locations where cargo tanks used to transport Division 2.1 (flammable gas) materials that are cryogenic liquids are domiciled.
- (3) The serial number or vehicle identification number of each cargo tank used by the carrier to transport Division 2.1 (flammable gas) materials that are cryogenic liquids, and the name of each Division 2.1 (flammable gas) material that is a cryogenic liquid transported in each cargo tank.
- (c) The registration statement must be filed:
 - (1) Initially between January 1 and February 28, 1985 (this initial statement is only required to contain information regarding operations that took place during the 90 days prior to the date of the statement); and
 - (2) Subsequently, between January 1 and February 28 of each odd numbered year after 1985
- (d) For equipment obtained or operations begun between the two-year filing intervals specified in paragraph (c) of this section, the information must be provided on the registration statement filed during the next required filing period.

Subpart B

LOADING AND UNLOADING

Note For prohibited loading and storage of hazardous materials, see § 177.848.

Sec. 177.834 General requirements. (a) Packages secured in a vehicle. Any tank, barrel, drum, cylinder, or other packaging, not permanently attached to a motor vehicle, which contains any

Class 3 (flammable liquid), Class 2 (gases), Class 8 (corrosive), Division 6.1 (poisonous), or Class 7 (radioactive) material must be secured against movement within the vehicle on which it is being transported, under conditions normally incident to transportation.

(b) No hazardous materials on pole trailers. No hazardous